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Attorney for Plaintiff,
 PALOMAR GRADING AND PAVING, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PALOMAR GRADING AND PAVING, INC., a
 California Corporation, and THE UNITED
 STATES OF AMERICA For The Use And
 Benefit of PALOMAR GRADING AND
 PAVING, INC.

Plaintiff,

v .

WESTERN INSURANCE COMPANY, and
 CORNERSTONE BUILDING GROUP

Defendants.

AND RELATED CROSS ACTION

Case No.: 08 CV 521 JAH WMc

**RESPONSE OF PALOMAR GRADING
 AND PAVING, INC., TO PETITION TO
 COMPEL MEDIATION**

DATE: JUNE 30, 2008
 TIME: 2:30 P.M.
 COURTROOM: 11
 JUDGE: HON. JOHN A. HOUSTON

PALOMAR GRADING AND PAVING, INC., (hereinafter referred to as "PALOMAR")
 respectfully submits the following Response to the Petition to Compel Mediation filed by defendant
 CORNERSTONE BUILDING GROUP (hereinafter referred to as "CORNERSTONE").
PALOMAR does not oppose mediation; however, **PALOMAR** believed and still believes that an
 Early Neutral Evaluation Conference, now scheduled earlier in the day on June 30, and the authority
 to order further mediation vested by Local Rule 16.1c2a, should be used to facilitate the mediation
 which is the subject of the Petition. In view of the related case of Bill Lowe Developments, et al.
v. Western Insurance Company, et al., 08-CV-0603 L(WMc), which is set for an Early Neutral
 Evaluation Conference the following day July 1, but also before the Honorable William McCurine,

1 JR., **PALOMAR** believes that the mediation process built in to Local Rule 16.1 is the best and
 2 possibly only way to arrange mediation including all of the interested parties.

3 **PALOMAR** agrees that the subcontract between it and **CORNERSTONE** states “[u]nless the
 4 parties agree otherwise, the mediation shall be conducted in accordance with the Construction
 5 Mediation Rules of the American Arbitration Association.” The problem with merely ordering such
 6 a mediation between **PALOMAR** and **CORNERSTONE** is that neither defendant Western
 7 Insurance Company, nor the numerous cross-defendants, nor Bill Lowe Developments are parties
 8 to that subcontract. Without each of the parties who are already currently scheduled to attend an ENE
 9 Conference before Magistrate McCurine, complete relief simply could not result.

10 Although citing authorities involving Arbitration and not Mediation, **PALOMAR** never
 11 intended to oppose Mediation; only to indicate a belief that it would become moot. **PALOMAR** was
 12 and still is concerned that such a Mediation would be futile in the absence of all of the parties to the
 13 related cases currently scheduled for ENE Conferences on June 30 and July 1. Given this concern,
 14 **PALOMAR** believes that, at the ENE Conference, the parties should ask Magistrate McCurine to
 15 order all parties in both cases to attend mediation pursuant to Local Rule 16.1c2, which states:

16 “If no settlement is reached at the ENE Conference, the judicial officer may do one of
 17 the following: a. Refer to non-binding arbitration or mediation to occur within forty-
 18 five(45) days (1) any case where the judicial officer believes arbitration or mediation
 19 might result in a cost-effective resolution of the lawsuit, and (2) any case with the parties
 20 have agreed to arbitration or mediation.”

21 It was for this reason that **PALOMAR** tried to alert this Honorable Court of a belief that the Petition
 22 would become moot.


23
 24 Date: June 12, 2008

25 s/ STUART D. HIRSCH, ESQ.
 26 Attorney for Plaintiff, **PALOMAR**
 27 **GRADING AND PAVING, INC.**
 28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY and declare under penalty of perjury that I am over the age of 18 years and am not a party to this action. My business address is 2150 N Centre City Parkway, Escondido, CA 92026. A copy of the foregoing RESPONSE OF PALOMAR GRADING AND PAVING, INC., TO PETITION TO COMPEL MEDIATION was served on this date by electronically submitting a copy of the same on the District Court's CM/ECF system

June 12, 2008


Monica Marty
Legal Assistant to Stuart Hirsch

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